IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

Crl.Rev.Pet.No. 2029 of 2007(C)

AGAINST THE ORDER DATED 09/04/2007 IN CRMP 1019/04 IN CC.6/2002 of ENQUIRY COMMR. & SPL. JUDGE, TRIVANDRUM

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REVN. PETITIONER: PETITIONER: 4TH ACCUSED

N.BHASKARAN NAIR, ASWATHI,
VETTAMUKKU, SATHIYAMANGALAM,
THIRUVANANTHAPURAM.

BY ADV. SRI.P.GOPALAKRISHNAN NAIR

RESPONDENTS: STATE

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. No. 2029 of 2007

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Dated, this the 14th day of August 2007

ORDER

The revision petitioner who is the 4th accused in C.C. 6 of 2002 on the file of the Enquiry Commissioner and Special Judge, Thiruvananthapuram, challenges the order dated 9-4-2007 passed by the Special Judge dismissing the application filed by the petitioner seeking discharge under Sec. 239 Cr.P.C.

2. The case of the prosecution can be summarised as follows:

A1 was working as Valuation Assistant in the office of the Special Tahsildar, Additional Land Acquisition Unit, Thiruvananthapuram, A2 was working as Village Assistant, A3 was working as Revenue Inspector and A4 was working as Special Tahsildar in the said office. Some time in the year 1992, A1 to A4 who are public servants, abusing their official position, entered into a criminal conspiracy with A5 the father-in-law of A1 and grandfather of A6. Pursuant to the aforesaid criminal conspiracy A2 prepared a false mahazar in respect of an extent of 26.40 Ares of land comprised in survey No. 337 of 35 of Kazhakkoottam-Meenamkulam Village and belonging to three brothers by name Thajudeen Riaz, Thajudeen

Siyad and Thajudeen Sameer and which proposed for compulsory acquisition for the benefit of Bharat Petroleum Corporation Limited. Pursuant to the aforesaid criminal conspiracy A2 prepared a false mahazar in respect of the aforesaid land proposed for compulsory acquisition. The said mahazar was to the effect that A5 was a kudikidappukaran residing in a hut in a portion of that land. A3 and A4 verified the details of the said mahazar and certified the same to be correct. This enabled A5 who had never resided in the said property to receive a sum of Rs. 22,308/- as compensation. The whole exercise on the part of the accused persons was with the malafide intention of including A5 in the list of project affected persons for getting employment to A6 in the Bharat Petroleum Corporation Limited. The accused have thereby committed offences punishable under Sections 13(2) read with Sec. 13 (1)(d) of the Prevention of Corruption Act, 1988 and Sections 468, 471 and 120 B I.P.C.

3. After hearing both sides and perusing the records I do not think that the prosecution has made out a prima facie case to frame a charge against the revision petitioner/4th accused, who was the Special Tahsildar (LA), Thiruvananthapuram as on 16-07-1992.

4. The facts leading to the impugned order can be summarised as follows:

An extent of 26.40 Ares of land comprised in Survey No. 337/35 of Kazhakkoottam-Meenamkulam Village was proposed for compulsory acquisition for the purpose of Bharat Petroleum Corporation Limited. Notification under Section 4(1) of the Land Acquisition Act was published on 2-3-1992. The draft declaration was issued on 21-5-1992. Notice under Sections 9(1) and 9(3) of the Land Acquisition Act was given on 1-6-1992. Enquiry under Section 9(3) of the Act was conducted on 15-6-1992. A5 had filed a statement claiming that he was kudikidappukaran residing in a hut situated in 10 cents of the said property. The land owners were three brothers by name Thajudeen Riaz, Thajudeen Siyad and Thajudeen Sameer. There was a settlement between the land owners and A5 and the land owners filed Annexure A4 statement before A4 stating that the land value for 5 cents may be given to A5. in the light of the above settlement A4 passed an award in terms of the compromise on 16-7-1992. Annexure 5 shows that the award was passed in accordance with the compromise. As per the provisions of the Land Acquisition Act A4 was bound to pass an award after apportioning the same under Sec. 29 of the Act.

5. What is alleged by the prosecution is that Annexure III Mahazar prepared by A2 falsely states that A5 was residing in a

portion of the property as a kudikidappukaran. A4 has made an endorsement to the effect that he verified and found correct the recitals in the mahazar and A4 has also affixed the signature to the same. It was on the basis of this mahazar that A6 who is the grandson son of A5 was given employment in the Bharat Petroleum Limited as a project affected person. In the first place, the categoric averment in the Crl. R.P. that the petitioner retired from service on 27-9-1992, i.e., just after two months of his passing the award in this case is not denied in the statement filed by the respondent/State. The F.I.R. in the case was registered on the basis of a private complaint filed before the Court of the Enquiry Commissioner and Special Judge by one Varkey Panhikaran on 9-1-1998. The petitioner herein was not even arrayed as an accused in the complaint and there was absolutely no allegation in the complaint against the petitioner. The complaint was forwarded to the Vigilance Police under Sec. 156 (3) Cr.P.C. for investigation. The Investigating Officer took statements from 24 persons and none of them had made any allegation against the petitioner. There is no material, much less any allegation, to suggest that the petitioner received any bribe or illegal gratification. It was only when the final report was filed that the petitioner was arrayed as an accused in the case.

6. It is true that the signature of the petitioner appears as the last signatory in Annexure III mahazar which was admittedly prepared by A2. A2 was the officer at the cutting edge who was expected to make a site inspection and report the true facts. After A2 submitted the said mahazar to which there are two independent witnesses, A3 who was the Revenue Inspector has signed below the signature of A2 after making an endorsement as follows :-

"Verified and found correct".

It was still below the above endorsement by the 3rd accused that A4 has signed. From that alone, no corrupt motives could be attributed to A4, particularly, when the award in the above land acquisition case was passed by A4 on the basis of the compromise arrived at between the landowners and A5 and not on the basis of Annexure III mahazar .

7. The job application of A6 was not forwarded by the petitioner herein but by his successor-in-office who probably might have relied on the aforementioned mahazar which was not prepared by the petitioner herein nor had the petitioner relied on the same while passing the award on 16-7-1992. The petitioner has not found in the award passed by him that A5 was a kudikidappukaran nor had the petitioner prepared any document to that effect.

8. Mere suspicion against the petitioner who was the Special Tahsildar is not enough under Sec. 240 Cr.P.C. to presume that he has committed the alleged offence. **(See Union of India v. Prafullakumar Samal - 1979 (3) SC 4 SC 4 and Alexander v. C.B.I. - 2006 (2) KLT 240).**

9. After hearing both sides and perusing the records, I am not able to agree with the Special Judge that there are sufficient grounds to proceed against the petitioner. On the contrary, I am of the considered view that the charge against the petitioner is groundless and accordingly the petitioner is discharged under Sec. 239 Cr.P.C. It is however, made, clear that the court below can proceed with the matter as against the other accused.

In the result, this Crl. Revision is allowed as above.

V.RAMKUMAR, JUDGE.

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